

**Saint Regis Mohawk Tribal Court**

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**Isaac Terrance, Michael Cook,** )  
**Caleb Bradley, Phillip Terrance,** )

**Case No.: 14-LND-00005**

**Appellant(s)** )

**-V-** )

**DECISION AND ORDER**

**Guilford White, Basil Cook,** )

**Appellee(s)** )

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**Procedural History**

On October 31, 2014 the Appellants, on behalf of themselves, filed an appeal of a Saint Regis Mohawk Land Dispute Tribunal (hereinafter SRMT LDT) decision dated October 6, 2014 in Saint Regis Mohawk Tribal Court (hereinafter SRMT Court/Court). A 20 day civil summons was issued the same day to the Appellees.

An Affidavit of Service was filed with the Court on October 31, 2014 providing that the Notice of Appeal and 20 Day Civil Summons was served upon the Appellees named in the Notice of Appeal.

A Notice of Appearance was filed by the Appellees on November 7, 2014 wherein Lorraine White stated her representation of the Appellees in this matter. An affidavit of service by mail was filed with the Court the same day proving service of the Notice of Appearance upon the Appellants.

Following two consecutive hearings in which the Appellants failed to appear, a motion was made by the Appellees and filed with the Court on September 25, 2015 to dismiss the action citing Fed. R. Civ. P. 41(b) in the Federal Rules of Civil Procedure, which applies to a party's failure to prosecute their case. In a decision dated November 13, 2015 the Court denied the motion to dismiss.

On December 3, 2015 a Notice of Appearance was filed with the Court by Vaughn Aldrich showing his retention as Attorney for the Appellants in this matter. An admission of service was filed the same day proving service of the notice of appearance upon the Appellees.

At a pre-trial hearing in SRMT Court on December 11, 2015 a briefing schedule was set for the parties in this matter, with the Appellants brief due February 5, 2016, and the Appellees brief due March 4, 2016.

The Appellants' brief was filed with the Court on February 1, 2016 and an Admission of Service was filed with the Court on the same day proving that the Appellants' brief was served upon the Appellees.

On March 4, 2016 the Appellees' brief was filed with the Court.

An Admission of Service was filed with the Court on March 11, 2016 proving that the Appellees' brief was served upon the Appellants.

Oral arguments were held in SRMT Court on May 23, 2016.

### **Factual Background**

The factual background in this matter is critically important as the several transactions involving the disputed land span a period of over fifty years. On April 25, 1953 a land sale agreement between Michael White and Basil J. Cook was recorded by the Saint Regis Mohawk Tribal Clerk. The agreement records Michael White selling Basil J. Cook approximately 14 acres of land with the boundaries described as,

"Bound on the East and South by lands of Raymond Sawyer or the Sawyer estate, on the west by the Louis Phillips Estate and on the North by the St. Lawrence River. Said parcel of land contains about fourteen (14) acres more or less..."<sup>1</sup>

A second transaction recorded on April 25, 1953 by the Saint Regis Mohawk Tribal Clerk documented a sale of land by Christina Jock to Basil Cook. The parcel is described as,

"... a tract of land one acre from Christina Jock and is bounded as follows. By Peter Johnson on the east side and by the Louis Phillips estate on south side and west sides. On the north by the St. Lawrence River."<sup>2</sup>

The last will and testament of Basil J. Cook, dated November 24, 1970 and recorded in the Saint Regis Mohawk Tribal Clerk's office, provided that Basil's wife, Freida M. Cook, would inherit his property for which a basic description was given without any reference to acreage. The instrument provided that,

"I hereby give demise and bequeath to my wife Frieda M. Cook all of my estate in its entirety and of whatever nature it may be... In the event that my wife and myself should die at the same time my estate shall be divided equally between my two sons Basil John Cook Jr. and Arthur Louis Cook... This property lies on Racquette Point and is bounded as follows, on south by Raymond Sawyer on north by the St. Lawrence River on the west by the road to the river by the late Louis Lazore camp."<sup>3</sup>

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<sup>1</sup> Record April 25, 1953 Land Sale Agreement between Michael White and Basil J. Cook.

<sup>2</sup> Record April 25, 1953 Land Sale Agreement between Christina Jock and Basil Cook.

<sup>3</sup> Record Last Will and Testament Basil J. Cook November 24, 1970.

Subsequently on April 7, 1975 a land sale agreement was entered into wherein the Saint Regis Mohawk Tribe agreed to purchase from Basil and Frieda Cook a parcel of property which included the 14 acres purchased from Michael White and land acquired by the Cooks from Bessie Squires. There is no description of the Bessie Squires' property contained in the record. The land sale agreement described the property as follows;

"This property is the property purchased from Michael White in 1953 per Record Book, this to be known as lot #1... All the land purchased from Bessie Squires in 1954 per record book, with the exception of a portion of the north side of the north trailer road, this will be known as lot #2."<sup>4</sup>

An undated document titled "Legal Description of Land Purchased from Freida and Basil Cook by the St. Regis Mohawk Tribe" included in the record described the property as;

"beginning at a point in the center of the road leading from route 37 to Racquette Point and running in a southerly direction 1,325 feet to the northerly bounds of the Sawyer Estate; thence running in a northeasterly direction along the northerly bounds of said Sawyer Estate direction along the northerly bounds of said Sawyer Estate 2,220 feet to the westerly bounds of the Sawyer Estate; thence running northerly 713 feet to the shore of the St. Lawrence River; thence along the St. Lawrence River to the north-westerly corner of the lot owned by Freida Cook, Basil Cook Jr. and Arthur Cook; thence running southerly a distance of 568 feet on westerly side of the Racquette Point Road to the point of beginning. Excepting and reserving from the above described parcel all that land belonging to Jessie Diebow and having a frontage of 248 feet on the St. Lawrence River and running southerly along the bounds of land owned by the Akwesasne Resort 293 feet to the center of the road; thence along the road a distance of 215 feet to the easterly bounds of lands of Akwesasne Resort and running northerly a distance of 152 feet to the shore of the St. Lawrence River and the point of beginning. Also excepting and reserving all that land belonging to Freida Cook, Basil Cook Jr. and Arthur Cook and having a frontage of 350 feet on the St. Lawrence River and a depth of 568 feet running to the center of the road."<sup>5</sup>

A check made payable to Basil and Frieda Cook in the amount of \$25,000 was issued on May 20, 1975 from the Saint Regis Mohawk Tribe.<sup>6</sup> A statement signed by Basil Cook and Frieda Cook on May 20, 1975 states that payment of \$25,000 was received from the Saint Regis Mohawk Tribal Chiefs.<sup>7</sup>

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<sup>4</sup> Record Land Sale Agreement Basil and Frieda Cook and St. Regis Mohawk Tribe April 7, 1975.

<sup>5</sup> Record Undated Legal Description of Land Purchased from Frieda and Basil Cook by the St. Regis Mohawk Tribe.

<sup>6</sup> Record May 20, 1975 Check payable to Basil and Frieda Cook.

<sup>7</sup> Record May 20, 1975 Acknowledgment of Receipt of Payment.

On September 30, 1975 a document was signed by Frieda M. Cook (Executrix of Estate) acknowledging that a payment of \$35,000 was received from the Saint Regis Mohawk Tribal Chiefs. This constituted the final payment for the Basil J. Cook Recreation Complex.<sup>8</sup>

The record also includes several documents regarding the Tribe's sale of a portion of the former Basil Cook property. In 1975, the Saint Regis Mohawk Chiefs authorized the establishment of Mohawk Indian Enterprises (M.I.E.) to establish a private investment group on August 25, 1975. The creation of the M.I.E. authorized it as a private enterprise that,

"MIE will be operated by St. Regis (Akwesasne) Mohawk Indian people, Completely autonomous from the Tribal government...This permission shall be binding on all future Chiefs and their successors."<sup>9</sup>

On November 16, 1975, M.I.E. issued a voucher, labelled as Voucher No. 2, to the St. Regis Mohawk Tribe. It states that \$500 will be paid to the St. Regis Mohawk Tribe for the purchase of property on Racquette Point between Mrs. Freda Cook and Shirley Aldrich.

On November 17, 1975 Mohawk Indian Enterprises issued a check in the amount of \$500 to the St. Regis Band of Mohawks. There is no memo included on the check or indication of why a check for \$500 was issued.<sup>10</sup>

In a letter written by Cecelia Square, a designee of M.I.E., dated June 1, 1982 and addressed to former Tribal Chief Leonard Garrow a copy of the recordation of the M.I.E. purchase of land on Raquette Point Road was requested.<sup>11</sup>

The record also includes two signed statements attesting that the \$500 from the M.I.E. to the St. Regis Band of Mohawks was for land, now known as Lot #2-C. On June 10, 1983 a signed statement from former Chief of Police Wilbur Barnes notes that,

"Early November 1975, the Police Department at Akwesasne was in need of about \$400 in order to meet payroll...The Tribal Council got the money by selling a parcel of land to M.I.E. The parcel of land is on Racquette Point situated between Chubby Cook and Shirley's on the Point consisting of 1 1/2 acres more or less."<sup>12</sup>

An undated statement from M.I.E. officer Russel P. Lazore included that,

"The party of the first part sells and releases all rights and title to a tract of land located on the St. Regis Indian Reservation and is bounded as follows: North side by the St.

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<sup>8</sup> Record September 30, 1975 Acknowledgment of Receipt of Payment.

<sup>9</sup> Record Mohawk Indian Enterprise Establishment August 25, 1975.

<sup>10</sup> Record Copy of Check from Mohawk Indian Enterprises to St. Regis Band of Mohawks for \$500 November 17, 1975.

<sup>11</sup> Record Letter Requesting Recordation June 1, 1982.

<sup>12</sup> Record Wilbur Barnes Statement June 10, 1983.

Lawrence River, East side by Scott Terrance, South Side the Racquette Road, and west side by "Chubby" Cook. West side boundary passes 6 feet from the utility shed as shown on attached map. This transaction was paid in full by M.I.E (Mohawk Indian Enterprises) to the St. Regis band of Mohawk as per agreement at one of the tribal meetings prior to Nov. 17, 1975. A map of the land involved is included with this document. All parties sign in agreement."<sup>13</sup>

On November 14, 2003 M.I.E. transferred ownership of the parcel of property, now known as Lot #2-C, to Isaac Terrance and Michael Cook. A Saint Regis Mohawk Tribe Use and Occupancy Deed was issued to Isaac Terrance and Michael Cook for Lot #2-C.<sup>14</sup>

Appellees subsequently repurchased from the Tribe land that was sold to the Tribe by Frieda and Basil Cook. A sale agreement dated March 15, 1985 transferred ownership of the property known as the St. Regis Mohawk Fishing camp site back to Appellees. The sale agreement included a description of the land which is the same land description used for the April 7, 1975 sale.

On October 5, 2000 a Saint Regis Mohawk Tribe Use and Occupancy Deed was issued to Guilford White and Basil Cook for a parcel of property previously known as Lot # 1 & 2 containing approximately 185 acres, and now known as Lot # 1, with a description of the property included.<sup>15</sup> This included the land bought in the 1985 land transaction. It is noted that this deed for 185 acres exceeds the acreage sold by Basil and Frieda Cook, subsequently purchased by Appellees, and includes property in addition to the land purchased from the Tribe in 1985.

### **Discussion**

This matter comes before the Court to determine the rightful ownership of the parcel of property known as Lot #2-C, a plot of land containing approximately 2 ½ acres and situated in the Racquette Point area of the Saint Regis Mohawk Indian Reservation (hereinafter SRMIR).

### **History of Lot #2-C**

The Court is tasked with determining the rightful owner of the parcel of property known as Lot #2-C. In order to resolve this dispute, we must first examine the history of the parcel in question, based upon the record before the Court in accordance with SRMT Law.<sup>16</sup>

As noted above, in 1953 Basil J. Cook (father of Appellant Basil Cook) purchased approximately 14 acres of property situated in Racquette Point on the SRMIR from Michael White. The Appellant in their own brief stated that,

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<sup>13</sup> Record Undated Statement Russel P. Lazore.

<sup>14</sup> Record November 14, 2003 Use and Occupancy Deed Lot #2-C.

<sup>15</sup> Record October 5, 2000 Use and Occupancy Deed Lot #1.

<sup>16</sup> SRMT LDRO XV (B) (2).

“Lot #2-C was originally a part of an entire parcel owned by the Basil Cook Sr. family in the Racquette Point area and designated as Lot #2. There is no dispute of the original ownership.”<sup>17</sup>

It does not appear from any of the documents filed by the parties with this Court, that there is any dispute as to the original ownership of the property now known as Lot #2-C.

On April 7, 1975 Basil and Frieda Cook agreed to sell a parcel of land to the St. Regis Mohawk Tribe with the sale agreement describing this property as,

“This property is the property purchased from Michael White in 1953 per Record Book, this to be known as lot #1... All the land purchased from Bessie Squires in 1954 per record book, with the exception of a portion of the north side of the north trailer road, this will be known as lot #2.”<sup>18</sup>

Two payments were made to the Cooks in accordance with the land sale agreement of April 7, 1975 with the initial payment of \$25,000 being made on May 20, 1975 and the final payment of \$35,000 being made on September 30, 1975.<sup>19</sup> Following the final payment made to the Cooks, the property was now in the ownership of the SRMT. There is no dispute between the parties that this sale included the land now known as Lot #2-C.

### **Validity of Sale to Mohawk Indian Enterprises**

What is in dispute is who now owns Lot #2-C, specifically whether the Tribe subsequently sold Lot #2-C to the M.I.E. in 1975, who then sold it to the Appellants in 2003, or whether Lot #2-C was included in the Tribe’s sale of land to the Appellees. If Lot #2-C was sold by the Tribe to M.I.E., then the Tribe would no longer retain any interest in Lot #2-C and would have no authority to include Lot #2-C in the 1985 sale of property to the Appellees.

In order for the Court to determine ownership of Lot #2-C the Court turns to the Saint Regis Mohawk Land Dispute Resolution Ordinance (hereinafter SRMT LDRO). The SRMT LDRO is the governing body of Tribal Law which the Court utilizes to resolve land disputes that are currently in front of the Court. It is also noted that the Court is tasked with the power to, “Interpret, construe and apply the laws and regulations of the Tribe.”<sup>20</sup>

The question is which standard to use to determine the ownership of the land. The LDRO states it is the moving party’s burden,<sup>21</sup> but the LDRO is silent as to a definition of the burden of proof of the moving party. The Court has previously found that the SRMT LDRO is to be used in conjunction with the SRMT Civil Code and Rules of Civil Procedure.<sup>22</sup> The SRMT Rules of Civil

<sup>17</sup> Appellants Brief February 1, 2016.

<sup>18</sup> Record Land Sale Agreement Basil and Frieda Cook and St. Regis Mohawk Tribe April 7, 1975.

<sup>19</sup> Record Checks in amount of \$25,000 May 20, 1975; \$35,00 - September 30, 1975.

<sup>20</sup> SRMT Tribal Court and Judiciary Code VI (1).

<sup>21</sup> SRMT LDRO Section V.D.

<sup>22</sup> 10-LND-00009 White v White; 14-LND-00003 David v SRMT.

Procedure's burden of proof is a preponderance of the evidence.<sup>23</sup> In this case, the original petitioners are the Appellees. Thus, the Court will examine the record to determine whether there is a preponderance of evidence contained in the record that the Appellees own Lot #2-C. As stated above, if the evidence demonstrates that M.I.E. bought the land in 1975 from the Tribe, then the Tribe no longer retained any interest in the Lot #2-C and could not include it in the 1985 land transfer to the Appellees.

The SRMT LDT determined in its decision that "No legal Sale Agreement was executed or Right to Use and Occupancy Deed was issued between the St. Regis Mohawk Tribe and the Mohawk Indian Enterprises (M.I.E.) on November 17, 1975 for Lot #2-C."<sup>24</sup> It is clear from the record that there was never a deed issued in 1975 to M.I.E. Thus, the Court turns to the issue of whether a "sale agreement" existed. The SRMT LDT does not define what it means by "sale agreement" and the LDRO does not define a "sale agreement." The LDRO does not require a sale agreement, bill of sale, or deed. The LDRO does require proof of ownership which could come in the form of a bill of sale, deed, or other forms of evidence. And, the LDRO provides SRMT LDT shall accept certain forms of evidence of land ownership, including a valid bill of sale, valid receipt, and "any other relevant evidence,"<sup>25</sup> which are to be considered in whether ownership is proved. Thus, question is not whether there is a "sale agreement" between the parties, but whether the Appellees can prove ownership of Lot #2-C, using the various forms of evidence outlined in the LDRO. As a result, the Court will focus on whether the evidence considered by the LDT demonstrated land ownership by the Appellees of Lot #2-C.

The LDT notes in its decision the document authorizing M.I.E. is a true and executed document. There is no dispute regarding the formation of M.I.E. However, the LDT notes the authorizing document states the M.I.E. will adhere to "Tribal Laws and Traditions." Of course as a tribally authorized entity they would be subject to tribal law. But the SRMT LDT states that the M.I.E. must adhere to the tribal law which requires a legal sales agreement or Use and Occupancy Deed to be published for the land transfer to be valid. As noted above, the LDRO does not define a legal sales agreement. Moreover, the LDRO does not require that a Use and Occupancy Deed or a sales agreement (whatever that may be) be published. Thus this finding by the SRMT LDT is not valid.

The LDT moves onto the letter signed by Chief Russell P. Lazore and acknowledges that it is a statement but states that it is "not an actual agreement for land transaction. This document was not dated or notarized."<sup>26</sup> The SRMT LDT appears to be holding this statement up to the standard of a bill of sale in the LDRO as it notes that the statement is not dated or notarized. However, this is a statement that offers proof of ownership, it is not a bill of sale and should not be considered as one. The statement is evidence of land ownership, as former Chief Russell Lazore, who was also a signature on the voucher, attested that the M.I.E. paid the Saint Regis Bank of Mohawks for land on Racquette Road. He signed it with M.I.E. under his signature which is evidence that as a member of M.I.E. he would have knowledge of the transaction. That the statement is not notarized or dated merely goes to the actual weight of the statement as evidence,

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<sup>23</sup> SRMT Rules of Civil Procedure Section XX Rule 17.

<sup>24</sup> Cook/White v. Terrance/Cook, 2014-002COO, Decision and Order – Page Seven.

<sup>25</sup> LDRO Section XIV (D).

<sup>26</sup> Cook/White v. Terrance/Cook, 2014-002COO, Decision and Order – Page Three.

not whether it is a valid bill of sale, as a valid bill of sale is only one form of evidence. The SRMT LDT is required to consider any relevant evidence.<sup>27</sup> Thus, the SRMT LDT was incorrect in determining that this not an actual agreement (or possibly bill of sale) as it is a statement of an interested party and should have been considered as relevant evidence.

The SRMT LDT then considered the copy of the check dated November 17, 1975 for \$500 to the St. Regis Band of Mohawks from M.I.E.<sup>28</sup> There is nothing written on the check which indicates the reason for the payment, which the SRMT LDT noted and then proceeded to disregard the check. However, the SRMT LDT considered the check separately from the voucher rather than considering them together. The voucher, dated November 16, 1975, is from M.I.E. and is support for Check No. 2. The M.I.E. check dated November 17, 1975 is labelled as Check No. 2, to which the voucher refers. Thus, the check and voucher are related. The voucher states a payment was made to the Tribe for \$500 for the purchase of property on Raquette Point between Mrs. Freda Cook and Shirley Aldrich. The SRMT LDT stated the voucher is an authorization to execute the purchase, but does not state it was paid.<sup>29</sup> This is accurate but evidence must be considered together, not each document as a standalone piece of paper. Because the voucher identifies Check No. 2 and explains the \$500, the exact amount of Check No. 2, and the voucher and check were both signed by Harry Cook, the check and the voucher must be considered together. Considered together, the M.I.E. check and voucher are evidence M.I.E. purchased Lot #2-C from the Tribe for \$500.

The SRMT LDT also considered a June 1, 1982 inquiry from Cecelia Square, a representative of M.I.E., to former SRMT Tribal Chief Leonard Garrow regarding a parcel of land sold by the SRMT to an entity known as M.I.E.<sup>30</sup> The letter requested “the recordation of the M.I.E. purchase of the land on Raquette Point Road.”<sup>31</sup> The SRMT LDT notes this document is “evidence that Cecelia Square did not have a sale agreement or Use and Occupancy Deed for the purchase of 2.5 acres at Racquette Point Rd. from St. Regis Mohawk Tribe to the M.I.E.”<sup>32</sup> As noted above, it is unclear what the SRMT LDT means by a “sale agreement” as that is not a term used by the LDRO. The letter is not necessarily evidence that M.I.E. did not have a sale agreement. The Court cannot infer as to why she was asking for the recordation. To do so would be speculation. But the letter can be considered together with Chief Lazore’s statement, the voucher, and the check. The letter indicates that M.I.E. believed a transaction occurred and that a recordation of the transaction and copy of that recordation was being requested. And it is not clear from the letter whether the recordation had occurred or not. But perhaps most importantly, the SRMT LDT is required to consider all forms of relevant evidence regarding ownership. And the letter sheds some light on the issue as it indicates that Cecelia Square, a member of the M.I.E. who had signed the voucher, clearly believed the transaction had taken place.

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<sup>27</sup> SRMT LDRO Section XIV (D) 12.

<sup>28</sup> Cook/White v. Terrance/Cook, 2014-002COO, Decision and Order – Page Three.

<sup>29</sup> Cook/White v. Terrance/Cook, 2014-002COO, Decision and Order – Page Four.

<sup>30</sup> Record June 1, 1982 Letter Requesting Recordation of M.I.E. Purchase of Land from SRMT.

<sup>31</sup> Cook/White v. Terrance/Cook, 2014-002COO, Decision and Order – Page Four.



Also included in the record before the Court is a signed statement, dated June 10, 1983, from the former Tribal Chief of Police Wilbur Barnes who stated that;

“Early November 1975, the Police Department at Akwesasne was in need of about \$400 in order to meet payroll...The Tribal Council got the money by selling a parcel of land to M.I.E. The parcel of land is on Racquette Point situated between Chubby Cook and Shirley’s on the Point consisting of 1 ½ acres more or less.”<sup>3332</sup>

The SRMT LDT merely stated that this is a credible statement, but does not give any detail as to whether the statement was considered in conjunction with the other items of evidence discussed above.<sup>33</sup> However, Chief Barnes’ statement is supporting evidence that the sale to M.I.E. occurred, as he remembers the sale of property by the Tribe to M.I.E. and that it was property on Racquette Point. Although the amount does not match, he is only stating that the police department needed \$400 not that the property was sold for \$400.

The Court notes that an additional unsigned letter was received by the LDT. And this was properly disregarded as evidence because it was not signed.

The Court finds that when the above evidence is considered together, there is a preponderance of evidence that a land transaction between the Tribe and M.I.E. for Lot #2-C did in fact occur, and that the M.I.E was the owner of the property following the November 17, 1975 transaction for \$500. Despite the fact there is no notation on the check indicating what the \$500 was paid for, the voucher is supporting evidence that explains the check was for the land transaction. The voucher connects to the check because it lists the check number, was written a day before the check, and was signed by Harry Cook who also signed the check. Thus, the voucher explains that Check No. 2 was for the property on Racquette Point, which was subsequently sold by M.I.E. to the Appellants.

The two statements and letter also support that the \$500 was payment for Lot #2-C. Former Chief of Police Barnes’ statement indicates there was a land sale by the Tribe in order to pay their salary which was in the amount of \$400. Although the amounts do not match, there is no evidence offered up to indicate that Chief Barnes had any interest in the sale or that he had any bias which would affect his statement. The letter to Chief Leonard Garrow requesting a recordation of the land transaction supports the check as it indicates that the M.I.E. wanted the transaction, which they paid for, to be recorded or to receive a copy of the recordation. Finally, although the statement of former Chief Russell Lazore is not dated, his statement supports the reason that a check was issued to the SRMT was for the purchase of what is now known as Lot #2-C. Chief Lazore’s statement is made more compelling when the fact he was an officer of the M.I.E. at the time of the transaction is considered. Moreover, there is nothing in the record that calls into question the veracity of the statements which support the payment of \$500. There was no evidence offered by Appellees to challenge these statements, rather, Appellees focused on the failure of the Tribe to except Lot #2-C from their 1985 transaction. However, that is a separate issue the Appellees have

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<sup>32</sup> Record Wilbur Barnes Statement June 10, 1983.

<sup>33</sup> Cook/White v. Terrance/Cook, 2014-002COO, Decision and Order – Page Four.

with the Tribe, who is not a party to this case. Thus, the Court finds there is a preponderance of the evidence that the M.I.E. purchased Lot #2-C from the Tribe in 1975 for \$500.

### **1985 Land Sale**

As the Court has determined that the November 17, 1975 sale of Lot #2-C by the Saint Regis Mohawk Tribe to the M.I.E. was valid, we must now examine the land sale entered into by the SRMT and Guilford White and Basil Cook on March 15, 1985. The agreement in question was entered into following a Bid Submission made by Guilford White and Basil Cook to purchase property known as the Akwesasne Fishing and Resort Complex property which formerly included Lot #2-C within its boundaries.

In the signed sale agreement contained in the record, there is mention that a land description is included as Exhibit B, which details the boundaries and dimensions of the property being sold. The description of the property (Exhibit B) is the same document titled "Legal Description of Land Purchased from Freida and Basil Cook by the St. Regis Mohawk Tribe" and describes the property as,

"beginning at a point in the center of the road leading from route 37 to Racquette Point and running in a southerly direction 1,325 feet to the northerly bounds of the Sawyer Estate; thence running in a northeasterly direction along the northerly bounds of said Sawyer Estate direction along the northerly bounds of said Sawyer Estate 2,220 feet to the westerly bounds of the Sawyer Estate; thence running northerly 713 feet to the shore of the St. Lawrence River; thence along the St. Lawrence River to the north-westerly corner of the lot owned by Freida Cook, Basil Cook Jr. and Arthur Cook; thence running southerly a distance of 568 feet on westerly side of the Racquette Point Road to the point of beginning. Excepting and reserving from the above described parcel all that land belonging to Jessie Diebow and having a frontage of 248 feet on the St. Lawrence River and running southerly along the bounds of land owned by the Akwesasne Resort 293 feet to the center of the road; thence along the road a distance of 215 feet to the easterly bounds of lands of Akwesasne Resort and running northerly a distance of 152 feet to the shore of the St. Lawrence River and the point of beginning. Also excepting and reserving all that land belonging to Freida Cook, Basil Cook Jr. and Arthur Cook and having a frontage of 350 feet on the St. Lawrence River and a depth of 568 feet running to the center of the road."<sup>34</sup>

At this point the Court acknowledges that while there is a description of the property being conveyed to Guilford White and Basil Cook, it is simply the same document used in 1975. There is no mention of the November 17, 1975 sale of Lot #2-C to the M.I.E. by the Saint Regis Mohawk Tribe, property which should have been excluded from the sale agreement and noted in the land description provided for the sale agreement. The Court takes no position on the reason the sale to the M.I.E. was not specifically excluded or even mentioned when the SRMT sold the property to the Appellees, we simply note that there was no record of the sale in the documentation. However, given that the Tribe had already sold Lot #2-C to M.I.E., the Tribe no longer had any interest in

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<sup>34</sup> Record Undated Legal Description of Land Purchased from Frieda and Basil Cook by the St. Regis Mohawk Tribe.

Lot #2-C and thus could not sell what it no longer possessed to the Appellees. The fact that the Tribe failed to exclude it from the description does not automatically include Lot #2-C in the transaction, as the Tribe no longer had authority to sell the land.

### **Competing Deeds**

On October 5, 2000 a Saint Regis Mohawk Tribe Use and Occupancy Deed was issued to Basil Cook and Guilford White for property known as Lot #1 & 2 which consisted of approximately 185 acres. This deed appears to include the property formerly known as the Akwesasne Fishing and Resort Complex, which was also formerly owned by the Appellant Basil Cook's father (Basil Cook). The property is now known as Lot #1.

Nowhere in the Use and Occupancy Deed issued to the Appellees is Lot #2-C mentioned, nor is there an historical abstract of the property transferances from Tribal Records. The deed appears to include the property purchased by the Appellees in 1985 from the SRMT, but as noted above the Tribe had no authority to transfer this property as the Tribe sold it in 1975 to M.I.E.

On November 14, 2003 the M.I.E transferred its ownership interest in Lot #2-C to Isaac Terrance and Michael Cook and a Saint Regis Mohawk Tribe Use and Occupancy Deed was issued to Mr. Terrance and Mr. Cook for Lot #2-C, a parcel containing 2.549 acre(s) more or less.

In the matter at bar the Court recognizes that in fact BOTH parties have been harmed. The interesting thing to note is that neither of the parties involved in this land dispute have been harmed by the other. It was the historical failure to properly research the property in question and include that information in subsequent sale agreements, which has led to the dispute as it stands today. The Appellees argued that the property in question was included when they purchased from the SRMT in 1985. While they purchased the property in good faith, a mistake was made when the November 1975 sale to the M.I.E. by the SRMT was not properly excluded in the sale transaction or properly excluded from the totality of the property sold to the Appellees.

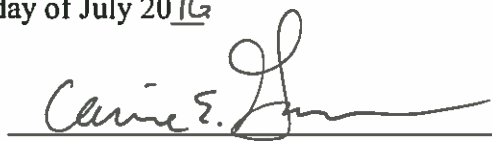
The M.I.E. owned Lot #2-C since the purchase from the SRMT in November 1975. The M.I.E. also had the right to divest their ownership interest in Lot #2-C to the Appellants, as they were the rightful owners of the parcel from November 1975 until their sale to Appellants in 2003.

The Court recognizes that although the Appellees have been incorrectly asserting ownership of Lot #2-C for a number of years, their disagreement is not with the Appellants in this matter, it is with the party from whom they purchased property in 1985.

### Conclusion

Therefore, we **VACATE** the SRMT LDT decision, substitute it with our own and find that: the Saint Regis Mohawk Tribe Use and Occupancy Deed issued to Isaac Terrance and Michael Cook for Lot #2-C containing approximately 2.549 acre(s) is a lawful deed and is upheld as such by this Court. We further **ORDER** that the Saint Regis Mohawk Tribe Use and Occupancy Deed issued to Guilford White and Basil Cook for Lot #1 be amended to reflect that Lot #2-C is **EXCLUDED** from the bounds of Lot #1 as it is in the ownership interests of the original grantees of the SRMT Use and Occupancy Deed, Isaac Terrance and Michael Cook.

Signed by my hand this 27<sup>th</sup> day of July 2016



Carrie E. Garrow, Chief Judge Saint Regis Mohawk Tribal Court

